



INTERIOR BOARD OF INDIAN APPEALS

Estate of Leona May DuBray Fallis Andrews Moran

2 IBIA 326 (06/27/74)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF LEONA MAY DUBRAY/FALLIS/ANDREWS/MORAN
(Deceased Rosebud Sioux Unallotted No. U-10268)

IBIA 74-20

Decided June 27, 1974

Petition to reopen.

Granted

Indian Probate: Reopening: Generally

The Secretary may, notwithstanding the omitted heir's failure to request a rehearing, order the reopening of the estate for the purpose of redetermining heirs where it appears that an heir of the deceased Indian was known but was inadvertently omitted from the determination of heirs.

APPEARANCES: Terry Pechota, for Petitioner

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board on a petition for reopening of the probate filed by the Area Director, Aberdeen Area Office, Aberdeen, South Dakota, for and on behalf of Antoine Moran, surviving spouse of Leona May DuBray/Fallis/Andrews/Moran, decedent. The Administrative Judge in his transmittal letter of September 18, 1973, recommended that the petition be granted.

It appears that the decedent died intestate in January 1966, and that the original order closing her estate entered June 21, 1966, omitted petitioner from the estate.

A hearing was held on May 12, 1966, at which time all interested parties were represented and had ample opportunity to offer evidence in support of their respective positions in the matter. The petitioner submitted a certified copy of the Marriage Register of the Church of Our Lady of Good Counsel, Wood, South Dakota, evidencing the marriage of decedent and the petitioner in a Roman Catholic ceremony on June 10, 1951. Although Leona Fallis and the petitioner had been separated for a period of time prior to her demise, no evidence was submitted to establish the termination of the marriage by divorce prior to Leona Fallis' death.

After full and careful consideration of the complete record, the Board finds that Antoine Moran married Leona May DuBray/Fallis/Andrews on June 10, 1951, and survived her upon her death in January 1966. Pursuant to the laws of descent in the State of South Dakota, the surviving spouse is entitled to one-third of the estate where decedent dies intestate and is survived by more than one child.

A finding is made that this estate should be reopened for the sole purpose of modifying and correcting the Order Determining Heirs, dated June 21, 1966, as follows: (1) to include the petitioner as an heir therein and (2) to reapportion the shares of the heirs in the estate.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the estate of Leona May DuBray/Fallis/Andrews/Moran, IS HEREBY REOPENED and the Order Determining Heirs issued June 21, 1966, IS HEREBY AMENDED, CORRECTED AND MODIFIED to redetermine the decedent's heirs and to reapportion their shares as follows, to wit:

Antoine Moran, surviving spouse	11/33
Bernard Sherdon Andrews, son	2/33
Lewis Brody Andrews, son	2/33
Bernadine June Moran, daughter	2/33
Iris Yvonne Jane Marie Moran, daughter	2/33
Orson Dale (Eddie) Cuny, son	2/33
Denise Susan Angeline Cuny, daughter	2/33
Richard Clair Moran, son	2/33
Jessie Edmund Moran, son	2/33
Frances Moran Kincaid, daughter	2/33
Dianne (Diane) Moran Kincaid, daughter	2/33
Leona Moran Kincaid, daughter	2/33;

and except as herein modified, the order of June 21, 1966, is and shall be unchanged and is final as of that date.

This decision is final for the Department.

 //original signed
 Mitchell J. Sabagh
 Administrative Judge

I concur:

 //original signed
 Alexander H. Wilson
 Administrative Judge